

§175-35 Flood Plain and Wetlands Protection District

A. Purpose.

The Flood Plain and Wetland Protection District and the regulations herein have been established with the following purposes intended:

The purpose of the Floodplain Overlay District is to:

1. Ensure public safety through reducing the threats to life and personal injury.
2. Eliminate new hazards to emergency response officials.
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding.
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding.
5. Eliminate costs associated with the response and cleanup of flooding conditions.
6. Reduce damage to public and private property resulting from flooding waters.

For purposes of this Bylaw, in cases of a building permit involving a one-family or a two-family dwelling, the word "Board" as found throughout this Bylaw § **175-35** shall be deemed to refer to the Board of Appeals. For building permits involving all other structures or uses (multi-family, commercial, definitive subdivision, mixed use, etc.), the word "Board" as found in this Bylaw § **175-35** shall be deemed to refer to the Planning Board.

B. Definitions.

For the purposes of this section of the zoning bylaw the following definitions shall be applied:

DEVELOPMENT - Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

FLOODWAY - The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Massachusetts Code, Chapter 2, Section 202]

FUNCTIONALLY DEPENDENT USE - A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

HIGHEST ADJACENT GRADE - The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

HISTORIC STRUCTURE - Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior or
 - b. Directly by the Secretary of the Interior in states without approved programs.

[US Code of Federal Regulations, Title 44, Part 59]

NEW CONSTRUCTION - Structures for which the start of construction commenced on or after April 5, 1986 (the effective date of Plymouth's Floodplain Overlay District). New construction includes work determined by the Building Commissioner to be substantial improvement. [Referenced Standard ASCE 24-14].

RECREATIONAL VEHICLE - A vehicle which is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

[US Code of Federal Regulations, Title 44, Part 59]

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA - The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Massachusetts Code, Chapter 2, Section 202]

START OF CONSTRUCTION - The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

STRUCTURE - For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

SUBSTANTIAL REPAIR OF A FOUNDATION - When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

VARIANCE - A grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION - The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in US Code of Federal Regulations, Title 44, Part 60, §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

C. Scope, and Authority and Delineation of District.

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated within Abington on the Plymouth County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program, dated July 6, 2021. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined

by the Plymouth County Flood Insurance Study (FIS) report dated July 6, 2021 and any amendments thereto. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk. The Floodplain District is herein established as an Overlay District.

Any Use, Structure or Development permitted in the portions of the Districts so overlaid shall be permitted subject to the provisions of this District, as well as those of the Massachusetts State Building Code, 780 CMR and the State Wetland Protection Act, G.L. c. 131, § 40 and its implementing Regulations, 310 CMR 10.00 et seq. dealing with construction in floodplains. The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes

C. Determination of applicability.

Whenever an application is made for a building permit on land which the Building Inspector believes may be situated partially or completely in the Flood Plain and Wetlands Protection District, he shall require that the applicant provide as part of his permit application a plan of the lot on which such building is intended to be built. The plan shall show elevations above mean sea level at two-foot contour levels, indicating the bench marks used and certified by a registered land surveyor or registered engineer. The Inspector shall transmit one copy of this plan to the Conservation Commission who shall review said plan and provide written interpretation within 14 days of receipt of said plan to the applicant, Building Inspector, and Board. If the Building Inspector determines that the proposed construction or alteration of the land is not in the Flood Plain and Wetlands Protection District, he shall so advise the applicant who may then apply for a building permit as set forth in § 175-76. If the Building Inspector determines that the proposed construction or alteration of the land is in the Flood Plain and Wetlands District, the Inspector shall notify the applicant who may then seek a special permit for the proposed use as set forth below in § 175-35H__.

D. District Administration.

1. Floodplain Administrator - The Town of Abington hereby designates the position of _____ to be the official floodplain administrator for the Town.
2. Requirement to submit new technical data

If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

FEMA Region I Risk Analysis Branch Chief

99 High St., 6th floor, Boston, MA 02110

And copy of notification to:

Massachusetts NFIP State Coordinator

MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114

E. Permitted uses.

See § 175-21.

F. Prohibited uses.

See § 175-21.

G. Flood plain requirements.

The following requirements shall be satisfied in the Flood Plain and Wetlands Protection District:

(1) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) In Zone AE, along watercourses within the Town of Abington that have a regulatory floodway designated on the Plymouth County FIRM, encroachments shall be and are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(3) Within Zones A and AE, no new construction, substantial improvement to an existing structure, filing, or other land development shall be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood.

(4) Floodway encroachment. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge unless certification by a registered professional engineer is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood. Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code

(5) Recreational vehicles. In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready. (6) All subdivision proposals shall be designed to assure that:

- (a) Each such proposal shall minimize potential flood damage;
- (b) All public utilities and facilities shall be located and constructed to minimize or eliminate potential flood damage; and
- (c) Adequate stormwater drainage controls shall be provided to reduce exposure to flood hazards.

(7) Base flood elevation data shall be required and provided for subdivision proposals or other developments greater than 50 lots or five acres, whichever is the lesser, within unnumbered A zones.

(8) In a riverine situation, the applicant and Conservation Agent shall notify the following of any alteration or relocation of a watercourse:

(a) Planning Board for each Adjacent Community.

(b) NFIP State Coordinator.

Massachusetts Department of Conservation and Recreation

251 Causeway Street, Suite 600-700

Boston, MA 02114-2104

(c) NFIP Program Specialist.

Federal Emergency Management Agency, Region I

99 High Street, 6th Floor

Boston, MA 02110

H. Special permits.

(1) For any land that is not within the Flood Plain and Wetlands District as shown under the FIRM and the FIS, but that is shown on the Town's 1976 Flood Plain Zoning Map to be within the flood plain, a landowner may apply to the Board for a special permit exception from inclusion in the Flood Plain and Wetland District and shall be eligible for such a special permit if the Board finds that the subject land is not in fact subject to seasonal or periodic flooding and if the proposed development is consistent with the purpose of this Bylaw, the Board may grant, after a public hearing with due notice, a special permit for the use of such land and for the construction and erection of a building or structure for any purpose permitted in the underlying district subject to reasonable conditions and safeguards.

(2) The application for a special permit exception shall include a site plan which shall include the items set forth in § 175-77B(5) and other engineering and hydrological data that the Board finds necessary.

(3) The application for a special permit exception shall include an environmental impact statement prepared by an environmentally qualified registered professional engineer. This statement shall describe the impact of the proposed use with respect to drainage, sewage, groundwater, surface water pollution, and other parameters as specified by the Board.

(4) The Board may waive some of the requirements of the site plan and/or the environmental impact statement where it determines that the probable impact upon the physical environment of the proposed use is to be minimal and that the technical data or a plan and/or environmental impact statement is not necessary to its consideration of the application. Because of the substantial scope, substance and impact of such projects, a waiver will not generally be granted where the proposed use involves a subdivision of land pursuant to Sections 81K — 81GG of Chapter 41 of the General Laws, a proposed site plan for construction of multiple family housing, or a proposed business, industrial, transportation or institutional use.

(5) The applicant shall provide the Board with an original and 10 copies of the application and any plan and/or environmental impact statement required by the Board. The Board will forward one copy of each to the Building Inspector, Conservation Commission, Board of Health, Highway Department, and other Town board or department deemed appropriate by the Board. These agencies may file written advisory reports with the Board within 30 days. The Board shall not grant approval of an application for an exception until these advisory reports have been received or until expiration of the said thirty-day period.

I. Requirements for all projects in the Flood Plain and Wetlands Protection District.

(1) Building Permits.

The following uses are permitted by right since they create a minimal risk of damage due to flooding and will not constitute obstructions to flood flow, provided that they are permitted in the underlying district and that they do not require structures, fill or storage of materials or equipment:

- a. Agricultural uses such as farming, grazing, truck farming, and horticulture.
- b. Forestry and nursery uses.
- c. Outdoor recreational uses, including fishing, boating and play areas.
- d. Conservation of water, plants and wildlife.
- e. Wildlife management areas; foot, bicycle and horse paths.
- f. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- g. Buildings lawfully existing prior to the adoption of these provisions, **{DATE}**.

(2) The Floodplain District is established as an Overlay District to all other Districts. All development in the District, including structural and non-structural activities, whether permitted by right or by Special Permit must be in full compliance with the all application state laws and regulations, including, but not limited to the following:

- (a)** MGL c. 131, § 40;
- (b)** 780 CMR (Massachusetts State Building Code), in its entirety, including the portions that address floodplain and coastal high hazard areas;
- (c)** 310 CMR 10.00 [Wetlands Protection Regulations, Department of Environmental Protection (DEP)];
- (d)** 310 CMR 13.00 (Inland Wetlands Restriction, DEP); and
- (e)** 310 CMR 15 (Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP).

(3) Commonwealth of Massachusetts Variances to building code. The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

(4) Abington Zoning Bylaw Variances. A variance from these floodplain bylaws must meet the requirements set out in §175-82(D)(3) and in addition, may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in

additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

J. Permits are required for all proposed development in the Floodplain Overlay District

The Town/City of _____ requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

K. Assure that all necessary permits are obtained

(Town/City)_____’s permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired.

L. Unnumbered A Zones

In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

M. Enforcement.

See §175-80 and §175-81)

N. Disclaimer of liability.

The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

O. Severability.

If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.